



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1998

Ms. Judy Ponder
General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR98-3217

Dear Ms. Ponder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120919.

The General Services Commission (the "commission") received a request for various records pertaining to a named former employee. You seek to withhold the requested information under sections 552.102(a) and 552.103(a) of the Government Code.¹

Section 552.102(a) protects

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts

¹We note that the requestor argues that the commission's request for an attorney general decision was untimely. Section 552.301 provides that, in order to withhold information, a governmental body must seek an attorney general decision "not later than the tenth *business* day after the date of receiving the written request." (Emphasis added.) The commission received the request here on September 29, 1998. Its request for an attorney general decision was received in this office on October 13, 1998. The commission's request for our decision was thus timely.

about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). In practice, employee privacy under section 552.102(a) is less broad than common-law privacy under section 552.101 because of the greater public interest in disclosure of information regarding public employees. Open Records Decision Nos. 269 (1981), 169 (1977).

We have marked the material which must be withheld under common-law privacy. *See, Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

In this instance, you advise that the subject of the requested information was terminated by the commission and has "requested alternative dispute resolution" regarding that matter, that she "hired an attorney to represent her in her grievance hearing," and that the commission has received open records requests from the attorney. In our opinion, you have not demonstrated the applicability of section 552.103(a) to the information at issue.

The submitted information also contains motor vehicle license plate information which must be withheld under section 552.130. We have marked the license plate information which must be withheld. Also, sections 552.024 and 552.117 provide that a present or former public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. We have marked information which you must withhold under sections 552.024 and 552.117 if, as of the time of the request for the information, the employee had elected to keep this information private. Open Records Decision Nos. 530

(1989), 482 (1987), 455 (1987). Except as noted, you must release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 120919

Enclosures: Marked documents

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(w/o enclosures)